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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,665	01/04/2002	Wade W. Henriksen	10735.4	9441
21999	7590	04/13/2004		
KIRTON AND MCCONKIE 1800 EAGLE GATE TOWER 60 EAST SOUTH TEMPLE P O BOX 45120 SALT LAKE CITY, UT 84145-0120				
			EXAMINER YEUNG, GEORGE CHAN PUI	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/039,665

Applicant(s)

HENRIKSEN ET AL.

Examiner

George C Yeung

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 ~~is~~/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 and 29-31 ~~is~~/are allowed.
- 6) ☒ Claim(s) 13-28 ~~is~~/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/4/2002.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claims 13-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention for the following reasons:

1. The preamble of claim 13 is incomplete and indefinite since it fails to recite the functional effect of the device being claimed. An amendment to claim 13, line 1, after "device" being claimed. An amendment to claim 13, line 1, after "device" inserting -- for mixing and freezing a food mixture -- would obviate this rejection.
2. The preamble of claim 21 is incomplete and indefinite since it fails to recite the functional effect of the method being claimed. An amendment to claim 21, line 1, after "method" inserting -- for mixing and freezing food ingredients -- would overcome this rejection.
3. Claim 21 fails to clearly and distinctly point out that the mixing step is carried out within a canister.
4. Claim 21 also fails to clearly and distinctly point out that the canister encloses the elongated spindle (see claim 1, line 4, claim 13, line 5, and claim 29, line 4).

### ***Allowable Subject Matter***

Claims 1-12 and 29-31 are allowed.

Claims 13-28 are free of the prior art. Claims 13-28 would be allowable if amended to overcome the rejections under 35 U.S.C 112 set forth in this Office action.

Art Unit: 1761

***Prior Art Citation***

The Fiedler patent is cited to show a system for re-circulating ice cream. The Curry et al patent is cited to show an apparatus for making frozen confections.


***Conclusion***

Any inquiry concerning this communication from the examiner should be directed to Examiner George C. Yeung whose telephone number is (571) 272-1412. The examiner can generally be reached on Monday-Friday from 10:30 a.m. to 7:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1201.

G.C. Yeung/dh  
April 6, 2004



**GEORGE C. YEUNG  
PRIMARY EXAMINER**